

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LEONARD G CISNEROS, et al.,
Plaintiffs,
v.
WELLS FARGO BANK, N.A.,
Defendant.

Case No. [5:16-cv-00084-PSG](#)

**ORDER GRANTING MOTION TO
DISMISS**

(Re: Docket No. 18)

Defendant Wells Fargo Bank, N.A. moves to dismiss Plaintiffs Leonard G. Cisneros and Gretel R. Cisneros' first amended complaint.¹ Wells Fargo's motion to dismiss is GRANTED, with leave to amend.²

The heart of Plaintiffs' allegations is they and Wells Fargo had a deal, and Wells Fargo didn't hold up its side of the bargain. Plaintiffs allege that pursuant to a settlement agreement, they submitted a loan modification application to Wells Fargo, and Wells Fargo never sent them an "actual final written determination of eligibility for this modification."³ But Wells Fargo has submitted copies of letters that it sent to Plaintiffs denying their loan modification application, however,⁴ and Plaintiffs agree that the court can consider these documents.⁵ The letters indicate

¹ See Docket No. 18.

² Dismissal without leave to amend is only appropriate if it is clear that the complaint could not be saved by amendment. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

³ Docket No. 15 at ¶ 22.

⁴ See Docket No. 19-1 at Ex. B.

1 that Wells Fargo reviewed and denied both Plaintiffs' loan modification application and also
2 Plaintiffs' appeal from that denial.

3 At a hearing today, Plaintiffs did not deny receiving the letters, but argued that the letters
4 are insufficient because they do not comply with the content requirements for a "final written
5 determination." Plaintiffs did not allege that in their first amended complaint, however. Because
6 the letters show that the Plaintiffs were notified in writing of their ineligibility for a loan
7 modification, Wells Fargo's motion to dismiss is GRANTED, with leave to amend. Any amended
8 complaint shall be filed within 30 days.

9 **SO ORDERED.**

10 Dated: May 10, 2016

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12 PAUL S. GREWAL
13 United States Magistrate Judge
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26 ⁵ Plaintiffs initially opposed Wells Fargo's request for judicial notice of the letters, but agreed at
27 oral argument that the court could consider them. *See* Docket Nos. 32, 44.